

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

_____)	
In the Matter of)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	
)	
A National Broadband Plan)	GN Docket No. 09-51
For Our Future)	
_____)	

**COMMENTS OF FUNDS FOR LEARNING, LLC, IN RESPONSE TO THE
JULY 1, 2010 PUBLIC NOTICE REQUESTING COMMENTS
ON FORMS 470 AND 471 REVISIONS (DA 10-1248)**

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Summary

Funds For Learning, LLC (“FFL”) is dedicated to continuing the successes of E-rate stakeholders and the sustainability of the E-rate program. FFL recognizes the need to make the E-rate application process simpler and more transparent, supporting the streamlining of the Forms 470 and 471.

FFL supports the revision and/or elimination of several blocks of information on the Forms 470 and 471. Simple changes to several areas on the current forms could make a positive impact on the speed and stress levels associated with the application process. Any revisions to the Forms 470 and 471 should come in the form of removal, not addition, of required information to the form. Regardless, due to the assumed timing of the proposed changes, FFL recommends that no changes be made to the Forms 470 and 471 until the completion of Funding Year 2011.

The addition of consultant registration is dangerously unclear and potentially damaging to the fraud, waste and abuse efforts pressed by the Commission since the definition of consultant is not clearly defined. This ambiguity would seemingly allow anyone working in any aspect of the application process to be defined as a consultant, regardless of experience, expertise or ethical standards.

FFL supports the Commission’s proposal of requiring the Item 21 attachments be submitted within the Form 471 filing window; however, we do not support the proposal at this time because the current electronic submission medium is insufficient and impractical for large applicants. The current online system would place too large of an administrative burden on the applicants, as there would be a great deal of data entry associated with most applications. This, coupled with the bottleneck effect on the SLD website during the last few weeks of the application process, would compound the already stressful situation and would not be effective in streamlining the process.

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**COMMENTS OF
FUNDS FOR LEARNING, LLC**

In this Notice of Proposed rulemaking, the Commission seeks to revise the E-rate Forms 470 and 471 in order to streamline the application process and update the forms. The proposed changes are a result of the programs desire to simplify, streamline and secure the sustainability of the application process and the stakeholders that rely on E-rate funding to support their telecommunications and internet needs.

Funds For Learning, LLC (“FFL”) was established in 1997, just as the Commission issued its first regulations concerning the E-rate program. Since then, FFL has focused almost exclusively on E-rate, guiding hundreds of applicants and service providers through the intricacies of the program. FFL’s clients range from small private schools to some of the largest school districts in the country, as well as local and national service providers. Through years of hard work and steadfast dedication to the program, FFL has earned a national reputation for integrity, excellence, and outstanding service.

No Revisions to the Forms 470 and 471 Until the Completion of FY2011

FFL supports the Commission's intentions of streamlining the processes surrounding the procurement forms. However, any revisions to the Forms 470 and 471 before the conclusion of Funding Year 2011 could result in confusion and unnecessary anxiety for applicants that filed their Form 470 before the revisions were adopted.

For instance, as of July 29, 2010, there have been 675 Form 470s posted for services related to FY2011¹:

Form 470 Type	Form Count
FY2010 indicating it is for FY2011	111
FY2011	564
Total	675

Will the Forms already filed by applicants remain valid? Will applicants be required to supply additional information on an updated form or will they need to resubmit the forms after the changes are adopted?

In order for the Commission to avoid the unnecessary headaches that could accompany the Form 470 changes, we propose that regardless of the size and scope of changes accepted, they should not go into effect until the completion of funding year 2011.

Revisions to Forms 470 and 471 Should Remove, Not Add, Requirements

FFL supports the revision of the Forms 470 and 471. Simple changes to several areas on the current forms could make a positive impact on the speed and stress levels associated with the application

¹ Form 470s posted during the period March 1, 2010 to July 29, 2010. Source: E-rate Manager™

process. We support the Commission's proposed subtractions from the Forms. We believe that these removals serve as a good start; however, these improvements could quickly be negated by the addition of other superfluous information, such as the listing of additional contact information.

Form 470

While the Commission has previously proposed eliminating the Form 470 for certain applicants, we feel that USAC could achieve its streamlining goals by making a few simple changes to the existing Form 470. FFL is in agreement with several of the proposed changes to the Form 470 by the State E-rate Coordinators Alliance (SECA) and E-rate Central.

The Form 470 can be improved in several ways. First, the form should no longer refer to a funding year. Funding requests are, of course, related to specific funding years; however, service agreements are not. Associating the Form 470 with a specific funding year has never made the most sense, and, in fact, has contributed to applicant and service provider confusion. Therefore, we recommend that the funding year designation be deleted from the Form 470.

Second, the Form 470 should be simplified. The following items should be removed from the form because they cause confusion and do not add any value. We concur with E-rate Central with their proposal to eliminate the following items from the existing Form 470²:

- The check boxes for month-to-month and contract services, including multi-year and extendable contracts
- The check boxes for SPI/BEAR preferences
- The basic telephone check-off
- The technology resources check boxes
- The requirement to list telephone area codes and prefixes
- The requirement to list ineligible entities

² Comments of E-rate Central, CC Dkt. No. 02-6 (filed July 29, 2010)

Block 2

FFL supports the elimination of Block 2, Item 7a, 7b and 7c. Regardless of what is checked, they are eventually trumped by the information presented on the Form 471. This step is unnecessary and serves more as a stumbling block for applicants.

The current Block 2 Data requirements cause a great deal of stress and confusion on behalf of the applicant. Numerous mistakes are made when applicants simply post their request in the wrong service category. This could be resolved by combining Block 2, Items 8, 9, 10, and 11. Applicants should describe a service and check off the relevant category of service. An example is below:

Service	Quantity / Capacity	Service Category
Cellular - Voice Mail, Enhanced Services	District Wide	<input checked="" type="checkbox"/> TS <input checked="" type="checkbox"/> IA <input type="checkbox"/> IC <input type="checkbox"/> BM
Data Service & Internet Access for Mobile	District Wide	<input checked="" type="checkbox"/> TS <input checked="" type="checkbox"/> IA <input type="checkbox"/> IC <input type="checkbox"/> BM

© 2010 Funds For Learning, LLC; Source: E-rate Manager™ Website

Block 3

FFL supports the elimination of Block 3 in its entirety. We agree with the assertions made by E-rate Central and the comment made by SECA that “[T]he basic telephone service only option is redundant to the certification in Block 6, item 21 and serves as a continuing source of confusion to applicants”.³

Also, Block 3, Item 15 is unnecessary as it requests items that are ineligible for reimbursement and fall outside of the Commission’s scope of authority as long as the applicant does not try to seek reimbursement on the ineligible items.

³ Comments of State E-rate Coordinators Alliance, Dkt. No. 02-6 (filed on July 9, 2010)

Block 4

The current area code and prefix information required in Block 4 is burdensome for applicants and unnecessary in determining E-rate eligibility. The elimination of this requirement would greatly help expedite the process and eliminate unneeded administrative burden.

Form 471

FFL further supports the elimination of requirements on the Form 471. Much like the Form 470, the Form 471 could be shortened and thus simplified by the removal of unnecessary information.

Discount Rate

The current discount matrix should be revised so that funds are allocated fairly and accordance with need. As discussed in its recent NPRM comments, FFL recommends a revised, simplified discount matrix, with fewer discount options; a separate discount rate for priority one and priority two services; and the elimination of the rural and urban site distinctions:

INCOME Measured by % of students eligible for the National School Lunch Program	TELECOMMUNICATIONS AND INTERNET ACCESS Discount	INTERNAL CONNECTIONS (INCLUDING BASIC MAINTENANCE) Discount
Less than 5%	15%	10%
5% to 49%	55%	40%
50% to 74%	75%	60%
75% to 100%	85%	80%

FFL estimates that the revised matrix will have little effect on priority one services, particularly for applicants entitled to lower discount rates, while applicants seeking priority two

services will become more mindful of their projects. This proposed matrix would allocate funds fairly toward the most economically disadvantaged applicants.

Block 4

We propose eliminating the third-party verification requirements for NSLP data. We believe that the current reliance on outside parties to validate NSLP eligibility data is a hindrance to the application process. Furthermore, it does not appear to increase the accuracy of discount calculations, and, in fact, may introduce errors and incorrect discount rates more often than not. Ultimately, we disagree with the rationale that a state agency or a national statistics center is better equipped than an applicant's own nutritional services director to validate NSLP data.

As a group, nutritional service directors are well-informed, well-trained professionals. Their work is audited and subject to intense scrutiny on a routine basis by various other state and federal agencies. FFL firmly believes that the best and only party that can verify NSLP data is a school district's own nutritional service director; therefore, we recommend that the third-party verification requirements be eliminated for Block 4 NSLP data.

Block 5

The Block 5 information on the Form 471 is void of any practical order and seeks information that will be provided in the required Item 21 Attachments. Block 5 could easily be scaled back to streamline the form and reduce undue error from the applicant. We propose that Block 5 be reduced to the following three questions:

- Annual pre-discount amount
- Annual ineligible amount
- Annual discounted amount

The other items requested on the form are redundant when coupled with the information supplied with the Item 21 Attachments. Furthermore, the distinction between recurring and non-

recurring charges is a constant “gotcha” for applicants, resulting in funding denials and reductions that otherwise would not exist had they simply selected the correct box.

Block 6

Items A-F under certification 25 are redundant or ask questions that are not pertinent to the E-rate process. Additionally, answers regarding future budgets are often presumptuous in nature as the applicant’s final budget for the upcoming funding year has yet to be approved.

Revisions to Forms 470/471 Should Not Include Consultant Registration

FFL supports the continued efforts to ensure the integrity of the E-rate program and its stakeholders. However, without further clarification, FFL opposes the Commission’s proposal to require E-rate consultant registration. The current ambiguity would seemingly allow anyone working in any aspect of the application process to be recognized by USAC as a consultant, regardless of experience, expertise or ethical standards.

Consultant Information Currently Resides in the Letter of Agency

As originally submitted in reply comments on December 15, 2008,⁴ FFL argued that the Commission already possesses the vehicle for collecting the consultant information in the form of the required letter of agency. FFL believes that the LOA is the appropriate mechanism for USAC to continue to capture consultant information. The LOA allows USAC to know the consultant(s) assisting an applicant, the scope of that support, and the timeframe for that support. Through the current LOA format, USAC has, and would continue to have, the most up to date authorization from the applicant. FFL further believes that the Commission should focus on utilizing the LOA rather than adding additional information to various FCC forms.

⁴ Reply Comments of Funds For Learning, LLC, WC Dkt No. 05-195 (filed on December 15, 2008)

FFL frequently interacts with USAC on behalf of applicants. USAC staff is well-trained to request a LOA defining the scope of FFL's authority and we cannot recall a time in which USAC did not request a LOA before allowing FFL to provide information or do work on behalf of an applicant.

The USAC outreach efforts also encourage the use of the LOA. The July 30, 2010, "Schools and Libraries News Brief" published by USAC includes the following tip:

"TIP OF THE WEEK: If you are submitting a service substitution and you are not the applicant (e.g., you are a consultant or a service provider), include a copy of your Letter of Agency or other agreement showing that you are authorized to act on behalf of the applicant. USAC cannot proceed with the request until this information is on file."⁵

The existing LOA format affords an applicant the opportunity to define exactly what authorization a consultant has or does not have. For example, a school could authorize a consultant to prepare its forms, or to provide guidance only. Some consultants prepare forms, some submit forms and others submit and make certifications on behalf of applicants.

The Commission's proposed changes leave the extent of a consultant's scope of work and authority unclear. On the other hand, the current LOA process provides USAC with a much finer degree of information while also allowing applicants the flexibility to define clearly the scope of authority entrusted to their consultant. Given USAC's significant investment in its staff and technology infrastructure, USAC should have the current means to retain and catalogue the LOA's already in its possession for all funding years without placing further burden on the applicants to enter information on forms.

⁵ See <http://usac.org/sl/tools/news-briefs/preview.aspx?id=311>

Consultancy Definition Cannot Be Uniform

As we previously commented on December 15, 2008:

“There simply is too wide a variety of individuals and organizations that provide advice and/or training and/or assistance with forms to E-rate applicants. Subjecting all of them, carte blanche, to the bureaucracy of formal consultant registration would discourage, rather than encourage, ethical and experienced people from providing the kind of valuable support that applicants need and have come to rely upon⁶.”

In order for applicants to have an idea of who would need to sign on the consultancy field, the Commission would need to define “consultant”. However, we agree with the comments submitted by the E-rate Management Professionals Association (E-mpaTM) that the practices, ethics and areas of expertise vary so greatly, that a singular definition cannot cover every degree of E-rate consulting. As submitted by E-mpaTM⁷:

The following is a good example of the kinds of categories into which E-Rate consulting services generally fall:

Sample Areas of E-rate Consulting Services

- E-Rate education and training
- Recordkeeping assistance
- Establishment and implementation of E-Rate policies and internal controls
- Compliance software services
- Compliance consulting for service providers
- CIPA compliance consulting
- E-Rate-related technology plan compliance consulting

⁶ Reply Comments of Funds For Learning, LLC, WC Dkt No. 05-195 (filed on December 15, 2008)

⁷ Comments of E-rate Management Professionals Association, Inc, Dkt No. 02-6 (filed July 8, 2010)

- Eligible services consulting
- Form 470 preparation
- Discount rate-related data collection
- Form 471 preparation
- Post Form 471 administrative consulting
 - Receipt Acknowledgement Letter (RAL) review
 - Form 471 correction and modification requests
- PIA and Selective Review response preparation
- Funding Commitment Decision Letter (FCDL) review and Appeal preparation
- Post commitment administrative form preparation:
 - Forms 486 and 500
 - Service substitution and service provider (SPIN) change requests
 - Invoice deadline extension requests
 - Contact change notifications
- Service certification and Service Provider Invoice (SPI) review
- Assistance with Service Provider collections and invoice reconciliations
- Reimbursement (BEAR) form preparation
- Audit assistance

If the Commission attempted to adopt an all-encompassing definition for an E-rate consultant, it would inevitably be impossibly broad in scope and dangerously ambiguous, which could lead to dishonest individuals registering themselves as consultants in order to defraud the program.

Determining Which Consultant Should Be Listed on the Forms

As stated above, E-rate consultants vary in the size and scope of their work. Some consultants provide technology planning and assistance, while others help with the procurement process and even the selection of service providers.

If we start adding additional signatures to the FCC Forms, where and when will it end? There are several possibilities involving various individuals. Here are a few scenarios:

- What if a consultant helps with the procurement process, but not the E-rate application? Should they sign?
- What if a consultant helps with the e-rate application, but not the procurement process? Should they sign?
- What if a consultant helps with the NSLP surveys and analysis? Should they sign?
- Many state E-rate coordinators also function as consultants. Because they often times answer questions about how to complete a form, should they be listed on the forms submitted?
- Who else at the school district should sign the form? In some cases, the superintendent or CIO signs the form. If the District has a dedicated E-rate coordinator, and if the District also receives guidance from a consultant, it would seem to make sense that requiring the E-rate Coordinator to sign the form would be just as significant as having a consultant sign the form.
- Outside attorneys are often involved in the procurement and contracting process, as well as the E-rate applications themselves. In what scenarios would an attorney's advice trigger their signature on the form?
- What would be the litmus test? Physically filling in the form? Providing the school with information that they themselves fill into the form?
- What about automated tools, such as FFL's E-rate Manager™ tool? This service allows schools to prepare their Form 470s and Form 471s "off-line" on a separate website. This tool has "wizards" that guide the applicant in completing its form, checks for errors, etc. At the applicant's discretion, the form is then transmitted to the USAC web site for final posting and submission by the applicant. Would the E-rate Manager™ tools that provide "automated consulting" be considered a consultant?
- What if there are multiple E-rate consultants and/or attorneys involved? Who would be the "controlling consultant" listed on the forms?

Also, applicants have been known to switch consultants. If a consultancy was listed on the Form 470 for funding year 2010, but then the applicant switched to another consulting group for funding year 2011, would the newly hired consultant be allowed to assist with any funding year 2010 issues since they were not listed as the consultant for that funding year?

FFL believes and supports the notion that it is important that USAC knows and understands who is aiding an applicant and who has authority to interact with USAC on behalf of an applicant. However, as noted above, USAC currently gathers this information through the LOA. Listing the consultant on the form will not give USAC additional information that it does not already possess.

Ultimately, FFL believes it is the individuals who are certifying forms and making commitments on behalf of applicants and service providers that should put their name and signature on E-rate forms. As demonstrated above, the FCC forms will become very complex if every individual who has played a role in the technology planning, procurement, contracting, application, and accounting aspects of an E-rate project must be listed on the forms. By requesting the consultant information, the Commission will be requiring some applicants to choose between a seemingly infinite number of possible consultant signatures all the while placing an unneeded burden on the applicant for the current funding year and future funding years as well.

Consultant Registration and Law of Agency

Forcing applicants to list a consultant on a Form 470 opens the door for service providers to incorrectly reach out to a consultant for information about the services and goods sought by the applicant. If the consultant/agent was to act on this inappropriate contact without actual authority, the applicant might still be bound to the agreement because the agent had apparent

authority. Unless the consultant is explicitly authorized and responsible for the procurement process, it would be, at a minimum, inappropriate and confusing to interested parties to list an “E-rate forms consultant” on such an important procurement vehicle.

Consultant Registration Will Be Difficult to Enforce

The NPRM fails to describe how this policy will be enforced and the potential penalties for not adhering to the new regulation. How will USAC know if an applicant is using a consultant or not? As previously stated, consultant duties vary in size and scope depending on the applicants needs. Some consultants will complete the forms and the applicant will proceed to make the certifications and submission. If the applicant decides to not put the consultant information on the form how would USAC know?

Subsequently, will there be a penalty for an applicant who does not list a consultant or doesn’t list all of the consultants who may have provided some type of support?

Item 21 Attachments Deadline

In effort to streamline the process, it would be an effective use of time and resources for all involved if the Item 21 attachments were required earlier in the process. FFL supports the Commission’s proposal of requiring Item 21 attachments be filed within the Form 471 filing window. This proposal could help expedite the funding process and result in quicker pace of funding commitments for applicants.

However, FFL opposes the use of the USAC website for electronic submission of the attachments. The current tool is impractical and insufficient to handle the voluminous amount of information that is required from large school districts. The current online tool requires too much data entry and is not feasible for the larger applicants that would have hundreds of items to enter and download.

By requiring that Item 21 attachments be filed within the Form 471 filing window, the already increased website traffic would bottleneck around the last week of the filing window and further strain the already stressed bandwidth for the website.

While we disagree with the means, FFL supports the Commission's proposal of requiring Item 21 attachments be filed within the Form 471 filing window. This proposal could accelerate the commitment process, but there must be alternatives to submitting the attachments online, especially for large applicants.

Conclusion

FFL is dedicated to the success of the E-rate program and we appreciate the deliberative efforts of the Commission to streamline the process. We welcome any improvements to the program which will continue to provide the much needed supports for schools, libraries and the constituents they serve.